

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DANIEL POOLE,)	
)	
Plaintiff,)	
)	
v.)	No. 07 C 6355
)	
VILLAGE OF BURBANK, a Municipal)	Judge Bucklo
Corporation, VILLAGE OF BURBANK POLICE)	
DEPARTMENT OFFICERS KARA KUSH,)	Magistrate Judge Schenkier
Star No. 119, and GREGORY PEROVICH,)	
Star No. 134, sued in their individual and official)	
Capacities as officers of the Village of Burbank)	
Police Department,)	
)	
Defendants.)	

DEFENDANTS' AFFIRMATIVE DEFENSES

NOW COME the Defendants CITY OF BURBANK, ("BURBANK") (improperly sued as the VILLAGE OF BURBANK), KARA KUSH ("KUSH") and GREGORY PEROVICH ("PEROVICH"), by and through their attorney, LOUIS F. CAINKAR, LTD., and for their affirmative defenses to the Plaintiff's complaint, state as follows:

AFFIRMATIVE DEFENSES

1. Any allegations relating to the actions by the individual Defendants in Counts I, II and IV of the Complaint are subject to qualified immunity.
2. Any allegations relating to the Defendants in Counts III and V are governed by the willful and wanton conduct standard governing acts in the execution or enforcement of law as provided by the provisions of 745 ILCS 10/2-202.
3. Any allegations relating to the Defendants in Counts III and V are shielded by the statutory discretionary immunity provided by the provisions of 745 ILCS 10/2-201.

4. The Defendants are immune from an award of punitive damages on Counts III and V pursuant to the provisions of 745 ILCS 10/2-102.
5. Any allegation relating to the City of Burbank in Counts III and V are subject to the immunity provided by the provisions of 745 ILCS 10/2-109.
6. Any allegations relating to the Defendants in Counts III and V are untimely and subject to the immunity provided by the provisions of 745 ILCS 10/8-101.

Respectfully submitted,

CITY OF BURBANK, KARA CUSH, and
GREGORY PEROVICH

S/ Joseph Cainkar
One of Their Attorneys

JOSEPH CAINKAR
LOUIS F. CAINKAR, LTD.
Attorneys for Defendants
30 North LaSalle Street - #3922
Chicago, Illinois 60602-3333
312/236-3985